

Upper Clark Fork River Basin Steering Committee
Meeting Summary
February 26, 2009

Introductions

Gerald Mueller, members of the Upper Clark Fork River Basin Steering Committee (Steering Committee), and others in attendance introduced themselves. Those in attendance included:

Members

Mike McLane
Marci Sheehan
Stan Bradshaw
Bob Bushnell
Tom Mostad
Bob Benson
Holly Franz

Group/Organization Represented

Montana Department of Fish, Wildlife and Parks (DFWP)
Atlantic Richfield
Trout Unlimited
Lewis and Clark Conservation District
Natural Resources Damage Program (for Carol Fox)
Clark Fork Coalition
PPL Montana

Agency Personnel

Ann Schwend
Terri McLaughlin
Dallas Reese

Montana Department of Natural Resources and Conservation (DNRC)
DNRC
Montana Department of Revenue

Public

Maureen Connor
Jacob Paterson-Perlman
Rankin Holmes

Granite County Commissioner
UM Department of Geography
Montana Water Trust

Staff

Gerald Mueller Facilitator

Agenda

- Review summary of the January 14, 2009 Meeting
- Updates
 - Steering Committee funding
 - Westside Ditch Company Natural Resources Damage Program project development grant
 - 2009 water legislation
 - Water commissioner interviews
- Montana Department of Revenue Tax Assessment of Irrigation Agriculture Lands
- Instream Flow Leasing Under 85-2-408(7) MCA
- Municipal Water Rights Study
- Public and Member Comment
- Next Meeting

January 14, 2009 Meeting Summary

The Steering Committee made no changes to the meeting summary.

Updates

Steering Committee Funding - Gerald Mueller reported that because the Appropriations Committee of the Montana House of Representatives has not yet begun making decisions on the state budget and related bills, the fate of funding for the Steering Committee for the coming biennium is not yet known. The Joint Appropriation Subcommittee on Natural Resources and Transportation agreed to include up to \$70,000 for the Steering Committee and the Clark Fork River Basin Task Force in the DNRC budget; however, John Tubbs has stated that the source of funds specified by the Subcommittee, DNRC hydro power revenues, cannot be used for the Steering Committee. As reported at the last Steering Committee meeting, DNRC has determined that \$16,996 had been included for the Steering Committee in its base budget supported by the general fund.

Westside Ditch Company Natural Resources Damage Program Project Development Grant - Gerald Mueller reminded the Steering Committee, that it was a successful co-applicant with the Westside Ditch Company for a \$25,000 Project Development Grant to the Natural Resources Damage Program (NRDP). The Steering Committee's role was to draft the grant proposal, using substantive content from the company. The purpose of the grant was to identify a possible project for increasing the efficiency of the Westside Ditch system and/or its operation that would also increase instream flow in the Clark Fork River. Funding for implementing the efficiency project would be pursued through a separate large NRDP grant application. Tom Mostad stated that one of the conditions of the Project Development Grant award was a review by the NRD staff of the alternatives identified for the efficiency improvements. After reviewing the draft report from the Westside Ditch and its contractor, Kirk Environmental, the NRD staff has decided that more information must be developed before an alternative can be selected for the basis for the large grant application. DNRC has agreed to assist Westside Ditch Company in developing this information by sampling its ditch during the next field season. Specifically, DNRC will make measurements of each diversion from the ditch to determine its associated losses. This means that a large grant application will not be possible this year.

Steering Committee Action - Those members of the Steering Committee present at this meeting agreed to act as a grant co-sponsor with the Westside Ditch Company again, if the company requests our assistance with grant writing.

2009 Water Legislation - Gerald Mueller passed out the status of the water bills before the 2009 Legislature (see Appendix 1), and highlighted the following bills.

- HB25 - This bill would have created an exemption for the Montana Department of Transportation for a water right permit for its wetland restoration activities. This bill died in the House Natural Resources Committee (HNRC).
- HB39 - This bill authorizes the Montana Attorney General to enforce water rights, in addition to county attorneys. It has passed the Montana House of Representatives (House) and will be heard on March 6, 2008 by the Senate Natural Resources Committee (SNRC).
- HB40 - This bill modifies the DNRC water right permitting process by allowing the department to make its criteria compliance determination upfront rather than at the end of the

permit process. The bill was amended to retain contested case hearings instead of show cause hearings. It passed the House and is scheduled for a hearing before the SNRC on March 6.

- HB275 - This bill would have authorized emergency instream flow to protect the fishery. It died in the HNRC.
- HB455 - This bill, known as the Big Sky Rivers Act, would have created streamside management areas and vegetated buffers on ten Montana rivers. It died in the House Local Government Committee.
- SB8 - This bill authorizes regional entities to own property, exercise eminent domain, levy taxes, and issue revenue bonds to acquire and fund projects and exercise other authorities to provide for collaboration and coordination in the management of water resources for agricultural and recreational uses. This bill passed the Senate and is scheduled for a hearing in the House Local Government Committee on March 10.
- SB17 - This bill would have required public water and sewer systems for certain subdivisions. It was tabled in the Senate Local Government Committee at the request of its sponsor.
- SB22 - This bill would create a permanent legislative water policy committee independent of the Environmental Quality Council. It passed the Senate on second reading and has been referred to the Senate Finance and Claims Committee.
- SB39 - This bill extends the life of the Reserved Water Rights Compact Commission. It has passed both the House and the Senate and has been signed into law by the governor.
- SB93 - This bill would have changed the requirements for a mitigation plan for a new groundwater permit in a basin closed to new surface water rights from an adverse affect to a net depletion. This bill died in the SNRC.
- SB94 - This bill removes some of the application requirements in statute for a ground water permit in a basin closed to new surface water rights. It passed Senate and has been transmitted to the House.
- SB120 - This bill revises the process for petitioning for a controlled ground water area, increasing the number of water right holders that must sign a petition and increasing the role of local governments in the petition process. This bill passed the Senate and is scheduled for a hearing before the HNRC on March 4, 2009.
- SB149 - This bill would have exempted municipal water companies and private water companies from the DNRC water right change process under certain conditions. It died in the SNRC.
- SB200 - This bill restricts the use of domestic cleaning products containing phosphorus in basins for which the Montana Department of Environmental Quality has adopted numerical nutrient water quality standards. It passed the Senate and has been transmitted to the House.
- SB303 - This bill requires DNRC to develop sections of the State Water Plan to address various water issues within the Clark Fork, Flathead, Missouri, and Yellowstone river basins and to create water user councils to advise it in each of these basins. This bill passed the Senate on second reading and has been referred to the Senate Finance and Claims Committee.
- SB396 - This bill exempts changes to the point of diversion from the DNRC change process under certain conditions. It passed the Senate and has been referred to the HNRC.
- SB437 - This bill clarifies that a body of water supplied with an appropriation of ground water from a source exempt from water rights permitting is exempt from the DNRC permit process. It passed the Senate and has been referred to the House Fish, Wildlife and Parks Committee.

Comment - SB396 was intended to exempt certain circumstances from a water right change of use permit, such as when a headgate is washed out or a ground water well fails. It has been amended so that it would likely exempt any change in the point of diversion. The bill sponsor has indicated acceptance of modifying the bill to narrow it back to its original purpose.

Comment - I would hope that the Steering Committee would consider supporting the Big Sky Rivers Act if it is considered by a future legislature.

Steering Committee Action - Those members of the Steering Committee present at this meeting agreed to support passage of HB40, SB22, SB94, SB120, and SB200.

Water Commissioner Interviews - Gerald Mueller passed out a copy of his interview with Stan Tordale, the water commissioner for Seven and Ten Mile Creeks located near Helena. See Appendix 2. This area has experienced significant subdivision growth that has complicated water management. Not all new landowners were familiar with water rights and their obligation to provide access to the ditches that run through their property for ditch maintenance and to the water commissioner to manage water. Mr. Tordale was able to gain access with the help of the local district judge. Mr. Tordale also stated that he may be nearing retirement, and that there is no institutional means for passing on knowledge when transitions occur in water commissioners.

Mueller stated that Jim Dinsmore has not been able to identify someone to interview regarding the water commissioner position on Flint Creek. Mr. Dinsmore has said at previous Steering Committee meetings that Flint Creek water users have had difficulty finding someone to act as the water commissioner.

Mr. Mueller summarized the lessons from his four commission interviews to date as follows.

- In agricultural areas where landownership is not changing, the existing water commissioner mechanism tends to work when:
 - Water users are familiar with water law and the decrees which specify individual water rights;
 - Water users have been able to find people to act as water commissioners;
 - The water commissioners have sufficient people skills to develop the trust of the water users whose rights the commissioner administers;
 - The commissioners have established relationships with their local district judge with jurisdiction over water right issues.
- The relationship between water commissioners and the local district judge is crucial; changing judges creates uncertainty for both the commissioner and the water users.
- Changes in landownership and land use pose challenges for the existing water commissioner mechanism because new owners and water users may not be knowledgeable about water rights and will not likely be familiar with existing water right decrees.

Comment - Tin Cup Creek and Sweeney Creek in the Bitterroot are two examples where the existing water commissioner mechanism is not working well. The commissioner on Tin Cup Creek had trouble getting paid and resigned in the middle of the irrigation season. The commissioner on Sweeney Creek, who oversees the work of three deputy commissioners, did not

file a report on his activities for three or four years. His water allocation actions were not always based on local water rights.

Comment - The Steering Committee should continue to consider a different model for water commissioners. It would be helpful if DNRC could identify qualified people who would be willing to act as a commissioner. Other states have a more centralized approach to water commissioners and water management.

Comment - Idaho uses an approach involving both state and local levels in water administration. The Director of the Idaho Department of Water Resources is responsible for dividing the state into water districts. Water users within a district elect a water commissioner and set his or her compensation. The commissioner is a state employee and the state provides technical support and information for his or her actions.

Response by Gerald Mueller - The approach of other western states is discussed in the Steering Committee's February 2006 paper entitled, "How Will Completion of the Adjudication Affect Water Management in Montana?"

Comment - One approach might be to establish water commissioner apprentice programs for training and to provide for transfer information when commissioner transitions occur.

Comment - This past year, the Water Policy Interim Committee looked the water commissioner mechanism and water right enforcement; however, after hearing from water commissioners in the Bitterroot and Gallatin watersheds who argued that the existing mechanism works well, the Committee opted not to propose changes.

Comment - Even if change has significant opposition now, the Steering Committee should continue to consider this issue and should be prepared to provide information about problems with the existing water commissioner mechanism and alternatives for addressing them to a permanent water policy committee.

Comment - If we have sufficient funds to do so, over the next biennium, we might consider a project in which a student would interview all of the water commissioners in the upper Clark Fork.

Montana Department of Revenue Tax Assessment of Irrigation Agriculture Lands

Gerald Mueller introduced this topic. At our last meeting, a Steering Committee member noted that DNRC is proposing a new methodology for determining the historic consumption associated with pre-1973 water rights. This methodology may have the effect of limiting water availability pursuant to a pre-1973 water right, which may in turn limit agriculture productivity. This member also said that the Montana Department of Revenue (DOR) is reappraising irrigated agricultural lands for tax purposes and that the reappraisal may be based on productivity. We therefore, invited Dallas Reese, who is in charge of DOR's agricultural and forest land reappraisal effort, to discuss the reappraisal methodology.

Mr. Reese explained the reappraisal methodology using the handout included in Appendix 3. DOR has a committee which advises it on its approach, and the committee recommended that the department use alfalfa as the crop on irrigated lands. DOR calculates a gross income based on an average price for alfalfa and a productivity figure. It then calculates a net income by taking 25% of the gross income value. It then deducts from the net income water, labor, and energy costs. By statute, the water deduction is set at \$10 per acre. Also by statute, the labor cost deduction is set at \$9.00 per acre for flood irrigation, \$4.50 per acre for sprinkling, and \$0 per acre for center pivot systems. The energy deduction is producer specific. DOR is using the Natural Resource Conservation Service (NRCS) soil survey to determine productivity on all agricultural land. The NRCS information assumes a full irrigation and likely overstates productivity in many cases. Individual producers have the option of providing productivity and water use information. If producers provide productivity and water use information, DOR will use a methodology developed by Dr. Jim Bauder of Montana State University to validate the irrigated productivity based on the amount of water used. To ensure accuracy, the DOR has mailed 290,000 maps of individual agriculture parcels to producers with productivity values. It is requesting feedback on the map data from the individual producers. DOR will use the feedback to ensure that the reappraisal is done accurately. If DOR receives information from several producers in a specific area of a county, the department will be able to make a wholesale adjustment to all landowners within that area based on Dr. Bauder's model. Since it would apply the adjustment uniformly throughout the area based on a number of producers' information, the department would avoid any impression of favoritism or special treatment. The reappraisal now underway is the first since the 1960s.

Question - Is DOR taking into account that the last eight years have mostly been drought years?

Answer - We are asking producers to provide water use information for the last ten years. We understand that some producers are reluctant to provide water use information because of a concern that doing so will adversely affect their water rights.

Question - Will the productivity data be posted on the DOR cadastral web site?

Answer - While most of the property information provided by the department is public, it will not be posted on the cadastral web site. The cadastral site includes information on irrigated acres and the productivity value determined by the department.

Question - Does the DOR conduct an independent evaluation of the number of acres of irrigated lands?

Answer - We depended on data from the Farm Services Administration about the number of acres farmed or grazed as our starting point. Ultimately it comes down to our determinations and the producers' feedback as to the number of irrigated acres.

Question - After you apply the deductions for water, labor, and energy costs, can irrigated acreage have a lower tax value than dry land agricultural acres?

Answer - We have a minimum or floor value of irrigated acreage of \$218.25 per acre.

Question - A parcel at 6,000 feet of elevation would have a lower productivity than land at a lower elevation. Would your methodology take this into account?

Answer - We use soil survey data to try to capture these types of factors. However, these data may not account for site specific information, which is why we are asking producers to provide feedback on the individual parcel maps.

Comment - It behooves water users to get together to review the productivity information and to provide feedback to DOR.

Question - What is the time frame for providing the feedback?

Answer - Producers should provide the site specific productivity information to us by mid-May. After DOR mails out the tax assessments in June, a producer will have to use the appeal the tax assessment to the state tax appeal board.

Question - It appears that the DNRC and the DOR are using different methodologies for determining land productivity based on water use. Will these processes be reconciled some time in the future?

Answer - DOR will be able to generate county agricultural productivity maps by irrigation type. These maps could be used to compare past and present productivity values.

Answer by Terri McLaughlin - The two approaches have different purposes. DOR is attempting to determine current productivity. DNRC is focused on the productivity of pre-1973 water use associated with the historic consumption for pre-1973 water rights.

Question - On a somewhat different topic, the recent court decision in the PPL Montana case means that the state rather than private individuals owns land in the beds of navigable streams. How is DOR determining the amount of land not owned by individuals for tax purposes?

Answer - When they are available, we rely on surveys of stream high water marks determined from meander lines. When they are not, we use the 2005 aerial photography and software to determine the acreage on navigable streams owned by the state.

Comment - Granite County lost 320 acres from its tax base due to the court ruling about the ownership of the beds of navigable streams.

Question - Is there a process for appealing DOR's navigable acreage determinations?

Answer - To challenge the ruling, you would have to file a lawsuit.

Instream Flow Leasing Under 85-2-408(7) MCA

Stan Bradshaw discussed this topic beginning with a brief history of water leasing for instream flow in Montana. The first statute authorizing the Montana Department of Fish, Wildlife and Parks (DFWP) to lease existing water rights for instream flow passed in 1989. In 1995, the legislature passed two bills creating the temporary authority for entities in addition to DFWP to lease water for instream flow to benefit the fishery. The Steering Committee authored one these two bills. Because of an irrigator concern that instream flow leasing would interfere with return flows, language was added to the Steering Committee bill stating that "...only the amount historically consumed, or a smaller amount if specified by the department (i.e., the DNRC) in the lease authorization, may be used to maintain or enhance streamflows to benefit the fishery resource below the existing point of diversion." By 2005, opposition to leasing for instream flow

had lessened, and the legislature made the leasing program permanent. The quoted language from the 1995 Steering Committee bill was included in the 2005 statute. Until recently, DNRC and those involved with leasing interpreted “historically consumed” to mean water that did not return to the stream reach protected by the lease. Mr. Bradshaw passed out the figure contained below in Appendix 3 to illustrate this interpretation. DNRC attorneys have recently said that “historically consumed” as used in 85-2-408(7) is limited to the amount of water consumed by plants through evaporation and transpiration (ET) or to deep percolation. This interpretation would reduce the amount of water that could be protected in a lease against future appropriation and would in turn reduce the efficacy of the lease. This issue has arisen in an application for a change permit on Prickly Pear Creek in the Helena Valley. Montana Trout Unlimited and the Montana Water Trust have filed an amicus brief in the case seeking a ruling that the amount “historically consumed” is that amount that does not return to the stream reach protected by the lease rather than the amount of ET.

Question - So DNRC attorneys are saying that a water right holder cannot lease all of the water that she or he diverts for instream flow purposes?

Answer - Correct. Only the amount of water consumed by the beneficial use, which in most cases would be ET, could be protected from future appropriation in a lease.

Question - Is the recent DNRC attorney opinion spelled out in a department policy or rule?

Answer - No.

Question - So the DNRC could adopt a rule clarifying that “historically consumed” means that amount of water formerly diverted that does not return to the stream reach protected by the lease rather than the amount of ET or deep percolation?

Answer - Yes. We expect that DNRC would abide by the judge’s ruling in the Prickly Pear case. If the judge limits “historically consumed” to ET and/or deep percolation, then instream flow interests may have to seek a statutory change.

Comment by Gerald Mueller - It appears that until the judge rules in the Prickly Pear case, no action by the Steering Committee on this topic would be appropriate. If the judge does not find that the amount “historically consumed” is limited to ET and/or deep percolation, then the Steering Committee could consider requesting a DNRC rule clarifying the definition to mean the amount that does not return to the stream reach protected by lease.

Municipal Water Rights Study

Gerald Mueller provided the background for this item. Last year, a spokesperson for the Seeley Lake Water District, Dr. Walt Hill, told the Steering Committee that growth on its system was approaching the total of Water District’s water right. In response, in addition to seeking a means to address the Seeley Lake situation, the Steering Committee worked with DNRC and the University of Montana Department of Geography to conduct a study to determine the status of all of the basin’s municipal water rights. Jacob Paterson-Perlman conducted the study. He examined all of the municipal water rights and compared the total volume of the rights to estimates for 2030 of the total amount of current water use by the community. Mr. Paterson-Perlman presented a table from this report making this comparison for Anaconda-Deer Lodge

County, Butte-Silver Bow County, Deer Lodge, Drummond, Milltown, Philipsburg, and Seeley Lake. The table is included below as Appendix 5. Future consumption was based on population projections from the Montana Department of Commerce Census and Economic Information Center (CEIC) and the assumption that water use per person remains unchanged through 2030. Also, because population projection data are not available for the customers of municipal water systems, county population projections were used for 2030 water use amounts. The table shows that all of the communities in the basin with municipal rights, except for Seeley Lake, will not likely approach the limits of their water rights by 2030. Seeley Lake's recent upgrading of its delivery system and the recent economic downturn that will likely slow development levels may mean that its existing water rights may also be adequate through 2030. Mr. Paterson-Perlman previously provided a draft copy of his report and welcomed comments from the Steering Committee on it.

Comment - The report refers to Clearwater Creek. I assume this should be the Clearwater River.

Question - What is the source of water for the Seeley Lake Water District?

Answer by Mike McLane - The source is a well which is an infiltration gallery on the Clearwater River near where it enters Seeley Lake.

Question - What is the most recent year of population data available from the CEIC?

Answer - 2008.

Question - Why are no data available for Drummond and Milltown?

Answer - Neither community has a municipal water system. Both rely on individual wells for domestic water. The same is true for Lincoln.

Public Comment

There was no additional comment.

Next Meeting

The next meeting was scheduled for Thursday, April 30, 2009 in Deer Lodge. The meeting location and agenda will be announced.

Appendix 1
Introduced Bills Matching the Search Criteria

* after status indicates the bill is *probably* dead
Total number of Introduced Bills - 53

Bill Type - Number	LC Number	Primary Sponsor	Status	Status Date	Short Title
HB11	LC0174	Jon C Sesso	(H) Hearing -- (H) Joint Appropriations Subcommittee on Long-Range Planning	01/16/2009; 8:00 AM, Rm 350	Treasure state endowment appropriations
HB25	LC0432	Bill McChesney	(H) Tabled in Committee* -- (H) Natural Resources	02/06/2009	Department of Transportation water rights for wetland projects
HB26	LC0547	Ken Peterson	(H) Tabled in Committee* -- (H) Fish, Wildlife and Parks	01/20/2009	Revise stream access at bridges
HB39	LC0428	Jill Cohenour	(S) Hearing -- (S) Natural Resources	03/06/2009; 3:00 PM, Rm 422	Revise water right enforcement laws
HB40	LC0430	Jill Cohenour	(S) Hearing -- (S) Natural Resources	03/06/2009; 3:00 PM, Rm 422	Revise water right permit process
HB41	LC0433	Jill Cohenour	(S) Hearing -- (S) Natural Resources	03/06/2009; 3:00 PM, Rm 422	Revise water quality laws for aquifer recharge or mitigation
HB52	LC0431	Walter McNutt	(H) Hearing -- (H) Appropriations	01/12/2009; 3:00 PM, Rm 102	Fund hydrogeologic study

HB135	LC0275	Tony Belcourt	(H) Hearing -- (H) Appropriations	02/03/2009; 3:00 PM, Rm 102	Revise laws implementing the Fort Belknap-Montana Water Rights Compact
HB161	LC0276	Shannon Augare	(H) Hearing -- (H) Appropriations	03/03/2009; 3:00 PM, Rm 102	Establish the Blackfeet-Montana Water Compact
HB181	LC1960	Ken Peterson	(S) Hearing -- (S) Local Government	03/04/2009; 3:00 PM, Rm 405	Authorize design-build water and sewer districts
HB190	LC0959	Kendall Van Dyk	(S) Hearing -- (S) Fish and Game	03/19/2009; 3:00 PM, Rm 422	Clarify bridge access law
HB201	LC1870	Janna Taylor	(H) Hearing -- (H) Appropriations	01/21/2009; 3:00 PM, Rm 102	Fund Clark Fork River Basin Task Force
HB236	LC1054	Deborah Kottel	(H) Tabled in Committee* -- (H) Judiciary	02/04/2009	Require landlord to test private water source for fecal and E coli
HB275	LC0191	Robin Hamilton	(H) Tabled in Committee* -- (H) Natural Resources	02/06/2009	Emergency streamflow for fisheries
HB285	LC1053	Michele Reinhart	(S) Hearing -- (S) Natural Resources	03/09/2009; 3:00 PM, Rm 422	Authorize use of gray water in commercial and multifamily structures
HB379	LC2110	Gordon R Hendrick	(H) Tabled in Committee* -- (H) Natural Resources	02/20/2009	Revise water law for changes

HB430	LC1335	Anders Blewett	(H) Hearing -- (H) Fish, Wildlife and Parks	03/05/2009; 3:00 PM, Rm 152	Fine for barbwire fences across navigable water
HB455	LC1032	Michele Reinhart	(H) Hearing -- (H) Local Government	02/19/2009; 3:00 PM, Rm 172	Big sky rivers act
HB470	LC0812	Jill Cohenour	(H) Tabled in Committee* -- (H) Judiciary	02/17/2009	Clarify court cost awards for water proceedings
HB505	LC1239	Michele Reinhart	(H) Tabled in Committee* -- (H) Local Government	02/18/2009	Revise lake shore laws
HB557	LC2131	Tony Belcourt	(H) Transmitted to Senate	02/25/2009	Generally revise laws related to regional water systems
HB575	LC1549	Bill McChesney	(H) Committee Vote Failed; Remains in Committee -- (H) Agriculture	02/20/2009	Revise water laws relating to coal bed methane
HB632	LC2317	Galen Hollenbaugh	(H) Referred to Committee -- (H) Appropriations	02/19/2009	Transfer funds for water adjudication
SB4	LC0391	David E Wanzenried	(S) Tabled in Committee* -- (S) Natural Resources	01/13/2009	Create standing water policy subcommittee of EQC
SB6	LC0142	Ron Erickson	(S) Tabled in Committee* -- (S) Local Government	01/20/2009	Revise public water supply fee law
SB8	LC0192	Ken (Kim) Hansen	(H) Hearing -- (H) Local Government	03/10/2009; 3:00 PM, Rm 172	Authorize regional water entities

SB17	LC0429	Gary L Perry	(S) Tabled in Committee* -- (S) Local Government	01/23/2009	Require public water and sewer systems for certain subdivisions
SB22	LC0392	Terry Murphy	(S) Hearing -- (S) Finance and Claims	01/29/2009; 5:00 PM, Rm 317A	Create Water policy committee
SB39	LC0057	Carol C Juneau	(S) Signed by Governor	02/25/2009	Extend duration of reserved water rights compact commission
SB93	LC0286	Larry Jent	(S) Tabled in Committee* -- (S) Natural Resources	02/10/2009	Clarify groundwater utilization laws in closed basins
SB94	LC0288	Larry Jent	(S) Scheduled for 2nd Reading	02/25/2009	Revise closed water basin permitting laws
SB95	LC0289	John Brueggeman	(H) Hearing -- (H) Natural Resources	03/04/2009; 3:00 PM, Rm 472	Temporary nutrient criteria for discharge permits
SB101	LC0404	John Brueggeman	(S) Tabled in Committee* -- (S) Natural Resources	02/06/2009	Certification for wastewater collection system operators
SB102	LC0403	John Brueggeman	(H) Hearing -- (H) Natural Resources	03/04/2009; 3:00 PM, Rm 472	Revise public water supply laws
SB120	LC0287	Ryan Zinke	(H) Hearing -- (H) Natural Resources	03/04/2009; 3:00 PM, Rm 472	Revise the controlled groundwater area petition laws

SB149	LC0285	John Brueggeman	(S) Tabled in Committee* -- (S) Natural Resources	02/03/2009	Change of use for municipal or county water and sewer districts
SB200	LC0662	Ron Erickson	(S) 2nd Reading Passed as Amended	02/24/2009	Restrict phosphorous cleaning products in certain areas
SB201	LC1925	Jesse Laslovich	(H) Hearing -- (H) Natural Resources	03/04/2009; 3:00 PM, Rm 472	Revise Crow Tribe water compact to allow change in use of escrow account
SB262	LC1256	David E Wanzenried	(H) Hearing -- (H) Local Government	03/05/2009; 3:00 PM, Rm 172	Allow per unit assessment in water and sewer districts
SB303	LC0463	David E Wanzenried	(S) Rereferred to Committee -- (S) Finance and Claims	02/21/2009	Update state water plan
SB314	LC0373	Rick Laible	(S) Bill Not Heard at Sponsor's Request -- (S) Natural Resources	02/14/2009	Clarify definitions for stream access laws--define natural, natural water body
SB324	LC0190	Verdell Jackson	(S) Tabled in Committee* -- (S) Natural Resources	02/21/2009	Revise laws related to power generation water rights
SB396	LC1949	Bob Story	(H) Referred to Committee -- (H) Natural Resources	02/24/2009	Alter criteria for permitting certain changes to points of diversion

SB407	LC1168	Rick Ripley	(S) 2nd Reading Passed as Amended	02/24/2009	Revise district court confirmation of federal water contracts
SB420	LC0188	Verdell Jackson	(S) Tabled in Committee* -- (S) Natural Resources	02/21/2009	Challenge of certain water rights during adjudication
SB421	LC0186	Verdell Jackson	(S) Bill Not Heard at Sponsor's Request -- (S) Natural Resources	02/18/2009	Clarify adverse affect in water law
SB422	LC0187	Verdell Jackson	(S) Tabled in Committee* -- (S) Natural Resources	02/21/2009	Generally revise water use act
SB426	LC1926	Jesse Laslovich	(S) Scheduled for 3rd Reading	02/25/2009	National bison range water compact
SB437	LC1684	Gary L Perry	(H) Referred to Committee -- (H) Fish, Wildlife and Parks	02/21/2009	Clarify fish pond licensure
SB440	LC0032	Kelly Gebhardt	(S) Scheduled for 3rd Reading	02/25/2009	Exempt air quality permits from MEPA review
SB461	LC0160	John Brueggeman	(S) 2nd Reading Indefinitely Postponed*	02/24/2009	Change of use for certain water users
SB465	LC1635	Bradley Hamlett	(S) Hearing -- (S) Taxation	03/11/2009; 8:00 AM, Rm 405	Clarify ownership of streambeds concerning property taxation
SJ7	LC1434	John Brenden	(H) Referred to Committee -- (H) Natural Resources	02/03/2009	Opposition to HR 2421

Appendix 2
Stan Tordale Survey
January 20, 2009

1. What is the basis for your administration of water, a water rights decree or some other agreement or document?
I administer two water right decrees.
2. Which specific decree or other agreement or document do you use?
I use the Seven Mile Creek and Ten Mile Creek decrees as filed with DNRC. I have a list of water rights with amounts and priority dates from DNRC.
3. For how long has the water in your drainage been administered in this way?
I am not sure. It maybe 25 years or longer.
4. How long have you acted as the water commissioner?
I have been the commissioner on these creeks for four years.
5. How did you come to play this role? How was commissioner selected?
I became aware of the commissioner through word of mouth. The previous commissioner was deployed to Iraq. A friend told me about the position vacancy. His brother was a member of the water users group. I was interviewed by the water users group. When they petitioned Judge Sherlock for a commissioner, the water users asked that I be appointed, and he did so.
6. Did the water users, the judge, or someone else first contact you about being a commissioner?
I was contacted by the water users group.
7. How often do you talk to the judge, and what issues do you generally discuss with the judge?
I usually talk with the judge a couple of times during the water season. He calls me in to visit at the start of the season. I have had to talk about access to the ditches with him.
8. Have you sought technical assistance in administering water, and if you have, from whom have you sought it?
I have visited with Jim Beck, a DNRC engineer about a problem with measuring water. I did so at Judge Sherlock's instruction.
9. How do carry out your work as the water commissioner?
I use the list of water rights from DNRC. Most of the water users are familiar with this list and know the details of their water right(s). I cover a large area that extends all the way to the interstate. I provide water based on first in time, first in right. The City of Helena is a large user on Ten Mile Creek. It reports its water use to me monthly.
10. What determines when you start administering water each year?

The water users file a petition with Judge Sherlock requesting a commissioner. I normally start on May 1. My work ends depending on the water year, usually by the second week in August.

11. How do you determine how much water each water right receives?
I use the lists of water rights from the two decrees.
12. How do you determine when a water right is in priority?
I use the lists of water rights from the two decrees.
13. Would you please describe a typical day administering water?
I make personal contacts with the landowners and water users. I check diversions, adjust the head gates, and document flow readings. I usually work four to six hours a day, depending on the demand for water.
14. What types of measuring devices, if any, are your users required to have?
By my request the water users have Parshall flumes which along with staff gauges are easy to read.
15. Do all of the users have to use the same measuring devices, or is there a variety of measuring devices?
Parshall flumes
16. Do you have any diversions without measuring devices?
No.
17. Do you have any diversions without controlling facilities, such a headgate that can stop diversions when the water right is not in priority?
No.
18. Have you ever denied a user water based upon the wasting of water? If so, please explain the situation.
I have not denied water, but I warned one user that he was allowing water to run down the barrow pit and that if he didn't stop doing so, that I would cut off his water. The warning was sufficient to correct the problem.
19. What challenges have you experienced in your role as a water commissioner?
Obtaining access across private land to the ditch has been an issue. Ranch properties are being sold and subdivided. Not all new owners understand water rights and their obligation to provide access to the ditch for maintenance and to allow me as the commissioner to observe diversions and ditch operations. Land owners and water users have sometimes had conflicts with each other, sometimes based on personalities and behavior. One user behaved in an intimidating manner toward a landowner, whose property the ditch crossed. I have on occasion had to tell folks not to tamper with headgates.

20. Have you had conflicts with individual water users in administering water, and if you have, how did you resolve them?
I do not generally have conflicts. I am courteous towards the landowners and water users. I have had to explain my role and authority.
21. Have you ever had a dissatisfied water users action filed against you, and if you have, how did you participate in the action?
One landowner threatened to sue me over access. Judge Sherlock sent the landowner a letter explaining my authority and that resolved the issue.
22. Do you foresee something that will or would make your job as a water commissioner easier or harder?
Continued subdivisions will probably be a challenge. The key to my role is person-to-person contacts and treating people courteously.
23. How will completion of the adjudication affect your actions as a water commissioner?
I don't see a problem. Water users have kept up the paper work documenting their water uses.
24. Are you compensated for your work as a water commissioner, and if you are, how is the compensation determined?
I am compensated. I negotiate the level with the water users. Judge Sherlock always makes sure that a compensation agreement is in place.
25. Do you have any recommendations for changing the way water is administered?
The list of water rights is sufficient. I may be getting close to retirement. It would be helpful to have a way to transfer information and experience from one commissioner to another. I didn't have that opportunity because the previous commissioner was deployed to Iraq.

Irrigated Water Cost Classes

5 water classes

Water costs range from \$0 to \$35. Total allowable water cost may not exceed \$40.00 per acre of irrigated land (15-7-201, MCA).

Water Class 1 = \$0 to \$19.99 (midpoint used in calculations is \$17.50)

Other water classes are in \$5.00 increments except WC 5 that includes all irrigated land with water cost greater than \$35 (\$37.50 midpt)

Irrigated land Water Costs

Statutory Base Cost \$10.00/ac.

Statutory Labor Cost /ac \$9.00 Flood

\$4.50 Sprinkler

\$0.00 Pivots

Producer Specific Energy Cost (fossil fuels or
electricity)

Example of Water Cost Calculation

Flood irrigation:

- a. Base Cost = \$10.00/acre
- b. Labor Cost = \$ 9.00/acre
- c. Energy Cost = \$ 0/acre

TOTAL = \$19.00/acre

Water Class 1 (< \$19.99 per acre)

Example of Water Cost Calculation

Wheel Line Sprinkler

a. Base Cost = \$ 10.00/acre

b. Labor Cost = \$ 4.50/acre

c. Energy Cost = \$ 20.00/acre

TOTAL = \$ 34.50/acre

Water Class 4 (\$30 - \$35/ac)

Example of Water Cost Calculation

Center Pivot Sprinkler

- a. Base Cost = \$10.00/acre
- b. Labor Cost = \$ 0/acre
- c. Energy Cost = \$ 20.00/acre
- TOTAL = \$ 30.00/acre

Water Class 4 (\$30 - \$35/ac)

Valuation Example

Irrigated Land

Avg. price for alfalfa = \$ 63.04/ton

Productivity = 3.2 ton/ac.

Gross income (3.2 X \$63.04) = \$ 201.73

Net income (25%) = \$ 50.43

Water Cost adj (wc 4 = \$32.50mdpt) - \$ 32.50

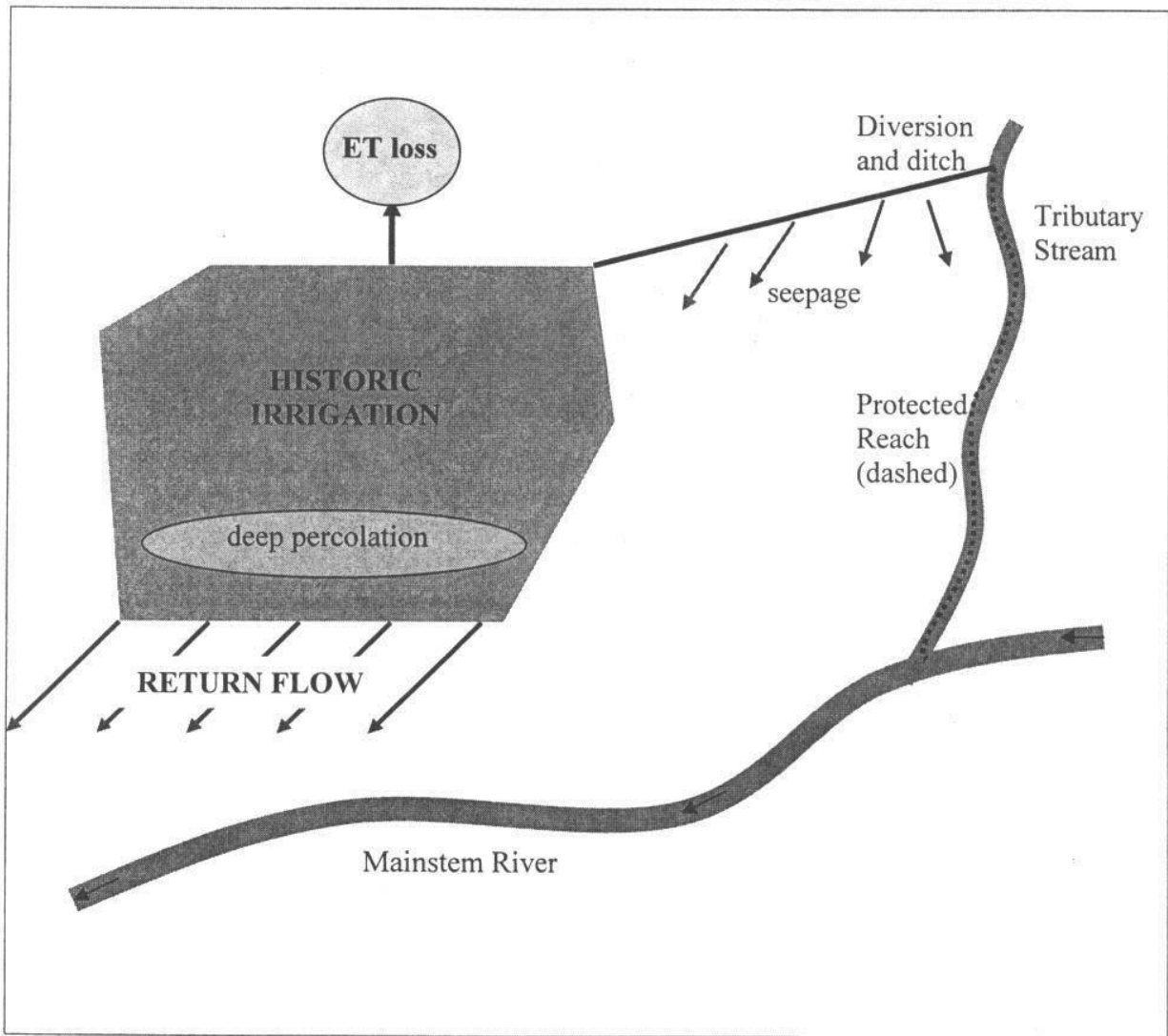
Net Income (\$50.43 - \$32.50) = \$ 17.93

Per acre value (\$17.93 ÷ 6.4%) = \$ 280.16

Appendix 4

Section 85-2-408(7): The maximum quantity of water that may be changed to maintain and enhance streamflows to benefit the fishery resource is the amount historically diverted. However, *only the amount historically consumed, or a smaller amount if specified by the department in the lease authorization, may be used to maintain or enhance streamflows to benefit the fishery resource below the existing point of diversion.*

Illustration of Irrigation Hydrology



Appendix 5

Table 1. Water use information for Upper Clark Fork River basin communities holding municipal water rights.

Community	Total Volume of Water Rights	Annual Water Use, 2009 (% of Total Volume)	Estimated Annual Water Use, 2020 (% of Total Volume)	Estimated Annual Water Use, 2030 (% of Total Volume)
Anaconda-Deer Lodge County	12467.1 acft/yr	3867 acft/yr (31%)	3523 acft/yr (28%)	3519 acft/yr (28%)
Butte-Silver Bow County	46078.2 acft/yr	8439 acft/yr (18%)	8273 acft/yr (18%)	8486 acft/yr (18%)
Deer Lodge	8481.28 acft/yr	780 acft/yr (9%)	814 acft/yr (10%)	870 acft/yr (10%)
Drummond	No Data	No Data	No Data	No Data
Milltown	No Data	No Data	No Data	No Data
Philipsburg	8463.95 acft/yr	848 acft/yr (10%)	895 acft/yr (11%)	942 acft/yr (11%)
Seeley Lake	350 acft/yr	250 acft/yr (71%)	291 acft/yr (83%)	329 acft/yr (94%)

Estimated annual water use for 2020 and 2030 was calculated by taking the community's predicted county growth rate for those decades and multiplying that by the annual water use for 2009.

The percentage of total volume that will be utilized shows how much water the communities are or will be using compared to the legal volume of the water right(s). For example, Seeley Lake is currently using 250 acft/yr, which is 71% of the total water legally available.